

State of New Jersey
Department of Environmental Protection

REFERRAL FORM

Date 7/28/87

TO
BERRY'S CREEK
SAC MEMBERS

FROM
JOE MAHER

TELEPHONE EXT. _____

For Your	<input type="checkbox"/> ACTION	<input type="checkbox"/> APPROVAL	<input type="checkbox"/> INFORMATION	<input type="checkbox"/> REVIEW
	<input type="checkbox"/> COMMENTS	<input type="checkbox"/> SIGNATURE	<input type="checkbox"/> FILE	<input type="checkbox"/> _____

RE: B.C. SAC

ATTACHED ARE THE MINUTES
OF THE LAST SAC MTG.
THE "RFP" IS BEING SENT OUT
FOR REVIEW/COMMENT TODAY. IT
APPEARS THAT THE NEXT SAC MTG.
WILL BE HELD ON WED. 8/26/87 AS
TENT. SCHEDULED @ THE LAST MTG.

ACCORDINGLY, AN AGENDA AND THE
MINUTES FROM SAC MTG. #6 WILL BE
FORWARDED BY 8/12/87.

SHOULD YOU HAVE ANY QUESTIONS OR
WISH TO ADD AGENDA ITEMS, PLEASE
CALL ME @ 609/633-0765





State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF HAZARDOUS SITE MITIGATION
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(609) 984-2902

Anthony J. Farro
Director

MEMORANDUM

TO: BERRY'S CREEK SITE ACTION COMMITTEE (SAC) MEMBERS AND/OR
MEETING ATTENDEES *msm*

FROM: DR. MERRY L. MORRIS, Chairperson, SAC

SUBJECT: MEETING MINUTES -- SAC MEETING #7 -- JUNE 30, 1987

MEETING ATTENDEES

Dr. Merry L. Morris, DHSM/NJDEP
Joseph Maher, DHSM/NJDEP
W. K. Weddendorf, Morton Thiokol
Chuck Hanson, Velsicol Chemical Corp.
George Harvell, Velsicol Chemical Corp.
Peter Brussock, DHSM, NJDEP
Larry Schmidt, Planning Group, NJDEP
Robert Tucker, Office of Science & Research, NJDEP

I. Call To Order

Dr. Merry Morris called the meeting to order at 8:20 AM. Future SAC meetings will begin at 8:30 AM at the request of C.Hanson.

II. Reorganization/New Members

Dr. Morris explained that the old Division of Waste Management has been split into three separate divisions: Division of Solid Waste Management, Division of Hazardous Site Mitigation and the Division of Hazardous Waste Management. DHSM oversees cleanups conducted with public money or conducted using the committee approach. DHWM, among other activities, oversees responsible party cleanups. There are many interactions between the Division of Hazardous Site Mitigation and the Division of Hazardous Waste Management.

A new SAC member was introduced -- Dr. Robert Tucker, Director of the Office of Science and Research, NJDEP. Dr. Tucker will be replacing Hank Garie. Dr. Tucker received a BA in Biochemistry at the University of California, Berkeley, an MA in Marine Biology at Humboldt State University, and a Ph.D. in Zoology at Duke University. He manages a staff of approximately 55 people.

A new TAG member was introduced -- Dr. Peter Brussock, Acting Section Chief, Bureau of Environmental Evaluation & Risk Assessment in DHSM. He is replacing Dr. Richard Dime. Dr. Brussock received a Bachelor's Degree at Lehigh University in Biology and a Ph.D. at the University of Arkansas in Aquatic Ecology and Water Resources Management. He has been with the State for 1 1/2 years and is currently working on 16 Superfund sites as a Technical Coordinator and is Acting Section Chief supervising 5 Technical Coordinators.

Karen Murdza will be taking minutes for this meeting.

C. Hanson (Velsicol) inquired about USEPA's participation. Kathy Stryker will be their representative. EPA has committed to be actively involved but Ms. Stryker had a schedule conflict and could not participate in this meeting.

III. Review/Adopt Minutes of SAC Meeting #6

The meeting minutes for SAC Meeting #6 are not ready for distribution. The minutes for meetings #6 and 7 will be ready within 14 days of this meeting. It was noted that, in approximately 30 days, J. Maher's section will be hiring a new employee and it is anticipated that this new employee will lend support to the management of the Berry's Creek project. W. Weddendorf (Morton Thiokol) noted for the record that they do not wish a new Project Manager be assigned the lead on this case and that J. Maher should remain as the Project Manager.

IV. Outstanding Business Items

J. Maher presented a chronology of what has transpired regarding the Report to the Court required by Provision C(8) of the Stipulation.

A. Report to Court

- . A synopsis of what transpired at SAC Meeting #6 was presented.
- . A revised court report dated October 31, 1986 was forwarded by Morton Thiokol's attorney, Edward Laird, to Dr. Morris.
- . This Report was forwarded to DAG Ron Heksch for review and approval.

- . R. Heksch approved the Report with one recommended change: Change title on front page from "Modification #1" to the "Stipulation Modifying the Stipulation". He further noted that he would take the lead in preparing a "consent order" upon execution of the document by each of the three parties and he would formally file it with the court.
- . W. Weddenford forwarded a subsequent version of the Report to Dr. Morris which changed the title of the appended SAC minutes from "Add to the Minutes..." to "Excerpt from the Minutes...".

Discussion ensued with regard to other modifications to the Stipulation. J. Maher noted that the following provisions in the Stipulation warrant revision:

1. Reference to the Superfund Reauthorization Amendments;
2. NJDEP's Administrative Cost (Exhibits D & E); and
3. Scope of Work (Exhibit B).

Larry Schmidt suggested accepting the language that was prepared by the lawyers and adding a cover letter indicating to the judge that there will be additional changes. It should recommend a mechanism for the court's consideration by which SAC could report back to the court in a less cumbersome fashion. There were no objections to this approach from the meeting attendees.

J. Maher gave each SAC member a copy of R. Heksch's memo. W. Weddendorf will take the lead in getting a new copy with the Laird/Heksch modifications and distribute to Dr. Morris, J. Maher, C. Hanson, and Thiokol. He will call all parties to insure it is acceptable. He will sign original and circulate it to NJDEP for approval and signature and then it will be sent to C. Hanson for the final signatures. C. Hanson will return the executed document to Dr. Morris for court filing.

DEP will prepare the cover letter to the court as suggested by L. Schmidt. A draft copy of the letter will be sent to the SAC members so they are kept informed.

L. Schmidt suggested someone should devise a more streamlined process in dealing with the court. Dr. Morris will talk to DAG Heksch to discuss how we can make this process smoother in the future.

B. Invoice Certification Procedure

J. Maher handed out copies of the revised Invoice Certification Procedure that was adopted by SAC at the last meeting. The adopted certification procedure incorporates the following amendments to the previous draft procedure as directed by SAC.

1. Deleted the last sentence of the first paragraph (from previous draft).
2. Changed the last paragraph of the previous draft which now reads "Morton Thiokol and Velsicol will submit payment (i.e., one-half of the amount of each certified bill) to NJDEP within 20 days after receipt of each bill which has been certified as described above."

C. Research Project

1. Integrity of Stored Sediment for Researchn

A recap of how the TAG addressed the issue of the integrity of the stored sediment at WES in light of the long holding times of the sediment was given by L. Schmidt. TAG agreed with the WES recommendation of evaluating three (3) rounds of daphnia toxicity testing as a measure of any change in the "quality" of the sediment for purposes of the research. The three rounds of testing have been completed, however, TAG will not formally adopt a resolution concerning the adequacy of the sediment until their meeting on 7/1/87.

L. Schmidt noted the internal discussion the NJDEP members had in preparation for the SAC meeting. It was suggested that the DEP Office of Science and Research document for the record their acceptance of the stored sediment for purposes of the WES research since they raised the issue. R. Tucker will have his TAG representative evaluate the integrity of the sediment. Chairperson Morris informed the committee that with the new TAG membership, concern has been expressed that the daphnia bioassays may not be the best approach to determine sediment toxicity. C. Hanson and W. Weddendorf voiced their concern for any change in attitude on the part of NJDEP which could potentially render the research results questionable.

Since the sediment issue will be finalized at the TAG meeting on 7/1/87, L. Schmidt's presentation of a formal TAG resolution to SAC was considered premature. A formal TAG recommendation will be presented at the next SAC meeting.

2. QAPMP Approval

As a result of the last TAG meeting on February 18, 1987, we found that we did not have a quality assurance plan in-house from WES. We were led to believe that the Office of Science and Research was working on it.

It turns out that the NJDEP Office of Quality Assurance which was under the OSR at the time was only reviewing the specific data package for the priority pollutant analysis of the Berry's Creek sediment that WES had forwarded to NJDEP. A Quality Assurance Plan had never been requested by OSR.

#1:	\$ 84,970.00
#2:	29,833.00
#3:	82,493.66
#4:	129,603.00
TOTAL:	\$326,899.66

These payments comprise payments 1-5 listed in Article 5 of the research contract but the total is less than the \$365,879 amount provided for in the contract through the quarter ending September 1987. J. Maher will forward to the responsible parties separately the documentation to support the DEP request for reimbursement for this work.

6. Other

With regard to the technical management of the Berry's Creek research, L. Schmidt suggested that P. Brussock go down to WES and LSU to get "hands-on" experience. W. Weddendorf and C. Hanson stated that, although it was an excellent idea to send P. Brussock down, it was unfair for them to pay for the staff's learning process due to NJDEP turnover and changes.

W. Weddendorf requested that P. Brussock inform him when the WES trip is scheduled because he would like to attend also if his schedule permits.

Chairperson Morris stated that she is committed to generating momentum for this project and the additions of R. Tucker and P. Brussock are the first steps toward this end.

Finally, inquiry was made by J. Maher of the status of the validation of the priority pollutant analysis of the Berry's Creek sediment analyzed by WES. P. Brussock will check on the status and will report back to SAC at the next meeting.

V. RFP

A. Scope of Work

P. Brussock has reviewed the SOW which was created by the subcommittee of TAG. He has some proposals for changes. These proposed changes will be discussed in detail at the TAG meeting scheduled for 7/1/87. Accordingly, discussion of the SOW can take place then with all SAC members present at the TAG meeting.

C. Hanson raised the issue of the NJDEP coordinating the Scope of Work for this project with other sites that potentially impact the Creek including Superfund sites and ECRA sites. P. Brussock informed the SAC that he is coordinating with the other Technical Coordinators assigned to those projects and that a continuing coordination will take place throughout the course of this project. As an aside, C. Hanson mentioned that he believes there

A Quality Assurance Plan that was put together by WES' subcontractor, LSU, was received from WES by J. Maher in March. P. Brussock has assumed lead responsibility in approving the document. Based upon comments received from the Quality Assurance Section in the Division of Hazardous Site Mitigation and the Office of Quality Assurance in the Division of Environmental Quality, it was determined the Plan was adequate to give WES verbal approval. P. Brussock gave WES verbal approval to proceed with the research.

P. Brussock informed the committee that a minimal amount of administrative documentation is required of WES including resumes of all individuals doing the research. Upon his receipt of this information, final written approval of the Plan will be given.

All future data reviews will be done by the Quality Assurance Section in Dr. Morris' element.

3. Project Schedule

WES will present an updated schedule of the research work at the TAG meeting on 7/1/87. Accordingly, no discussion of this item was warranted. All SAC members intended to be at the TAG meeting.

4. Project Budget

WES will present an updated budget for the research work at the TAG meeting on 7/1/87. Accordingly, no discussion of this item was warranted. All SAC members intended to be at the TAG meeting.

5. Industries Payment Reimbursement

J. Maher explained to the Committee how NJDEP billed the responsible parties for both administrative costs and reimbursement for the research costs expended to date. The responsible parties rejected the billing and requested additional information. J. Maher agreed that the request for administrative cost reimbursement was deficient. The billing was made directly by the NJDEP Division of Financial Management Planning, and General Services (DFMPGS) without forwarding through the Project Manager. J. Maher will work directly with DFMPGS to insure a proper billing is made in accordance with the Stipulation.

With regard to the WES research, the following advance payments have been made by NJDEP to WES:

may be a 3 year statute of limitations for "pulling in" other potential responsible parties to share costs in the investigation. However, if the attempt fails and any given party obtains a "Judgement for Release", then they are unconditionally released in the future. At this point in the investigation with little knowledge of any given parties impact on the Creek, Velsicol does not intend to pursue other PRPs at this point in time.

B. Schedule

J. Maher informed the committee that the X-312 Term Feasibility Contract was extended to July 31, 1987. DEP hopes to have the X-113 replacement contract in place by August 1st.

The X-113 contract tentatively includes 10 firms and 1 alternate. The tentative list was identified for the members. The official list will be transmitted upon approval by the Treasury Department.

W. Weddendorf stated that he has been interviewing TAMS, Baker, and LMS. His inquiries have indicated that TAMS is the closest to the site, but may be lacking in experience; Baker, a PA firm, would maintain a New Jersey office if selected. W. Weddendorf is personally satisfied with TAMS and Baker as adequate bidders for the job. He has requested Baker and TAMS to send a short explanation on their expertise for this job. He also noted that Morton Thiokol is utilizing Baker at the Plumstead sites.

L. Schmidt stated that Baker requested a copy of Task I. His policy is to allow any consulting engineering firm to take out a copy of Task I for a period of no longer than two weeks. SAC members had no problem with this.

P. Brussock asked if contractors on the list could be prequalified. If they are interested in the job, they could present a package to us on their qualifications and expertise. He gave the following criteria for judging a firms acceptability:

1. The firm's commitment to dedicate experienced staff to the project. Weston, CDM, and Black and Veatch have had problems with this on other projects.
2. The firm's experience in tidal marshes and wetlands sedimentology.
3. The firm's environmental assessment expertise.

In summary, DEP will take the lead in evaluating the X-113 firms pre-qualifications through Len Romino (Bureau Chief, Contract Management). J. Maher and P. Brussock will discuss it with Len Romino and determine the best approach for doing this. The results of this effort will be presented at the next SAC meeting.

A schedule for having the RFP in final bidding form was discussed. The committee agreed that September 1st should be the target date. In order to meet this deadline, W. Weddendorf offered the following motion:

"To the extent possible, P. Brussock will make every effort to revise the RFP to incorporate all SARA requirements and his recommended changes to the scope of work be submitted by July 15th to members of TAG by overnight mail. A meeting to discuss verbal comments on the RFP shall be held during the last week of July. ~~Written comments should be provided during the month of August. P. Brussock and the TAC Working Group,~~ on the basis of firm verbal comments, will proceed to refine the RFP thereafter for final presentation and approval at the next SAC meeting.

L. Schmidt requested, without objection, to include a caveat in the motion: the meeting the last week of July will be rescheduled if the RFP is not transmitted by 7/15/87.

Dr. Morris seconded the motion and it passed 5-0.

The scheduling of the TAG Working Group meeting will be discussed at the TAG meeting on 7/1/87. The SAC meeting for approval of the RFP is tentatively scheduled for August 26, 1987 at 8:30 AM.

C. SARA Impacts

P. Brussock stated that SARA requires a preliminary feasibility study to identify the ballpark of possible remedial actions. SARA also gives emphasis on environmental impacts independent of public health.

W. Weddendorf asked if the State had finalized their list of ARARs. P. Brussock presented an explanation of how an initial list of ARARs has been compiled by the State but that for a given project, ARARs are refined during the course of an RI/FS.

C. Hanson asked if there are any reporting requirements for this site under SARA? Dr. Morris stated that she is unaware of any reporting requirements.

VI. RI/FS Contracting

J. Maher presented a comprehensive explanation of the State procurement system, particularly with respect to the requirements for obtaining formal "Waiver of Advertising" approvals from the Department of Treasury. In instances where the State hires a contractor through a competitive bidding process to complete an RI/FS for a hazardous waste site of "unknown character" (and therefore a scope of work can only be tentatively defined), Treasury requires DEP to obtain a "Waiver of Advertising" when any approval of additional work items is

needed for which predefined contract prices are not available. This process makes it difficult for DEP to expeditiously complete projects that have numerous phases and/or unidentified work items that require change orders and "Waivers of Advertising".

In the spirit of cooperation and based upon Morton Thiokol's belief that the industries can contract for the same work as the State at less cost, W. Weddendorf offered a motion for SAC consideration in a letter to Chairperson Morris dated October 21, 1986 (see attached).

The industry proposed that if this motion were to be accepted by SAC, they would relinquish their perceived allowance under the order to invite firms in addition to those on the DEP's X-113 list to bid on the RI/FS.

Dr. Morris requested a conference with DEP members. Upon returning, L. Schmidt stated in order to get to the point where DEP could consider relinquishing some of the contracting to the industries, a case would have to be made to Assistant Commissioner Gaston. The case would have to include the following components:

1. Demonstrate why it would be advantageous for the industries to do the contracting.
2. Provide DEP with assurances that any contracting mechanism that would deviate from what is currently proposed would provide sufficient retention of control and decision-making within the DEP.
3. The industries would have to agree in advance to implement the alternative developed by the RI/FS.
4. Provide financial assurances consistent with implementation of the chosen alternative.

Arguments by C. Hanson made clear that Velsicol will not agree to the implementation of any alternative that has yet to be defined.

Dr. Morris asked for a second on the motion; none was received. W. Weddendorf subsequently withdrew his motion.

This item will be readdressed when and if the industries provide a written justification to allow them to contract for the RI/FS to Assistant Commissioner Gaston.

VII. Routine Monitoring

At the TAG meeting of 2/18/87, HMDC put together a proposal for continuation of the routine monitoring program that was carried out in 1986. The original agreement called for the industries to pay \$15,000. SAC did not expect to need routine monitoring in 1987 based on the anticipation that the RI/FS would have been underway. To avoid

having a full year without a continuous data record with regard to water quality, HMDC has gone forward with the first two bi-monthly routine monitoring events in anticipation of a contract. L. Schmidt indicated that the SAC should formally, by resolution, agree to the completion of the routine monitoring program for 1987.

L. Schmidt moved that SAC approve the routine monitoring for the Berry's Creek system as per the February 18, 1987 proposal by HMDC with the change that 10-15% of the mercury analysis be duplicated rather than 100% as originally proposed by HMDC. In addition, the cost of the routine monitoring shall be borne by the industries, the contracting shall be between the HMDC and the industries, and the dollar amount, not to exceed \$11,000, will be deemed eligible costs.

W. Weddendorf seconded the motion and it passed 5-0.

VIII. Community Relations

The SAC was advised that DEP will have an official Bureau of Community Relations representative and Community Relation Plan by the time of the kick-off the RI/FS. In the interim, J. Maher does have a continuing dialogue on our progress with both the Mayor and the Emergency Management Coordinator for the Borough of Wood-Ridge.

There is an outstanding issue of fencing the Velsicol property along the Creek at the tidegate. G. Harvell of Velsicol stated that they are willing to put in the fence once the local "requirement" issues are resolved. The portion of the property within Carlstadt is subject to HMDC approval. Velsicol is awaiting an approval letter from HMDC. Wood-Ridge Borough has committed to expedite all local approvals needed to install the fence.

NJDEP committed to get back to Velsicol with any State or Federal requirements that must be met. All members agreed that the fence should be installed.

IX. Administrative Cost Billing

C. Hanson moved to have W. Weddendorf, J. Maher, and G. Harvell get together and agree upon documentation and format needed from NJDEP in order to allow the industries to reimburse the State for their administrative costs. Dr. Morris seconded the motion and it passed 5-0.

X. EPA Presence

NJDEP will continue to make a special effort to keep EPA involved.

XI. Other

Under SARA there is a provision that says no federal, state, or local permits are required for cleanup of "the site". L. Schmidt posed the question "Does this mean that no Corp of Engineers 404 permit will now be required?" SAC members agreed to address this issue in the future.

km*

MOTION NO. 3

Whereas, The Request for Proposal has specified a comprehensive investigation and study program; and

Whereas, Bids by contractors for performing Remedial Investigation and Feasibility Studies, under the X-312 program, for much less complicated sites are commonly \$700,000 to \$900,000; and

Whereas, The proposed Modification No. 1 to the Stipulation and Supplementary Order shows that \$925,000 remains to perform the Remedial Investigation and Feasibility Study of the Berry's Creek Area; and

Whereas, It has been ascertained that a cost premium of about 20 percent may be involved as a result of incidental administrative requirements of the X-312 program; and

Whereas, Morton Thiokol and Velsicol recognize the authority of the NJDEP to maintain control of the selected consultant(s)' technical work effort in order to obtain satisfactory work products which will completely fulfill the requirements of the Request for Proposal; and

Whereas, The NJDEP, Morton Thiokol and Velsicol recognize that Paragraph C.8 of the Stipulation and Supplementary Order requires that SAC exert its best efforts to keep eligible costs within the specified limit; and

Whereas, Paragraph C.6 allows the use of alternative contracting methods which have been previously utilized to retain a consultant; therefore,

Resolved, That the consultant(s) selected by SAC shall be retained by Morton Thiokol and Velsicol; however, the performance of the consultant(s) shall be reviewed by SAC and bills rendered by the contractor(s) shall be deemed eligible costs after approval by the Invoice Certification Procedure.